

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 04-901 (JJF)
)	
ILLUMINA, INC.,)	REDACTED VERSION
)	
Defendant.)	
_____)	

**PLAINTIFF AFFYMETRIX, INC.'S
MOTIONS *IN LIMINE* FOR PHASE ONE OF THE TRIAL**

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Maryellen Noreika (#3208)
Derek J. Fahnestock (#4705)
1201 N. Market Street
Wilmington, DE 19899-1347
(302) 658-9200
dfahnestock@mnat.com
Attorneys for Plaintiff Affymetrix, Inc.

OF COUNSEL:

Michael J. Malecek
Daniel R. Reed
Andrea L. Gross
Stephen C. Holmes
AFFYMETRIX, INC.
6550 Vallejo Street, Suite 100
Emeryville, CA 94608
(510) 428-8500

Original Filing Date: February 15, 2007

Redacted Filing Date: February 23, 2007

**PLAINTIFF AFFYMETRIX, INC.'S
MOTIONS *IN LIMINE* FOR PHASE ONE OF TRIAL**

Affymetrix respectfully moves *in limine* for Phase One of the trial in this matter as set forth below.

1. Illumina Should Be Precluded From Offering Evidence Or Argument During The First Phase Of The Trial That Is Related Only To Issues To Be Litigated In Later Phases Of The Trial
2. Illumina Should Be Precluded From Offering Evidence And Argument Comparing Illumina's Accused Products And Methods With Affymetrix's Commercial Products And Methods
3. Illumina Should Be Precluded From Offering Evidence And Argument Relating To Illumina's Patents And Any Independent Development Of Its Microarrays
4. Illumina Should Be Precluded From Making Reference To Irrelevant And Prejudicial Matters
5. Illumina Should Be Precluded From Offering Certain Testimony Of Illumina's Damages Expert, Raymond S. Sims
6. Illumina Should Be Precluded From Offering Evidence Or Argument Related To Alleged Noninfringing Alternatives To Accused Products And Methods
7. Illumina Should Be Precluded From Referring To Claim Preambles As Limitations, Referring To Affymetrix's Validity Expert's Interpretation Of Claim Terms, And Rearguing The Court's Claim Construction
8. Illumina Should Be Precluded From Offering Evidence Or Argument During The First Phase Of The Trial That Affymetrix Does Not Own The Patents In Suit Or Have Standing To Sue For Infringement Of The Patents

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2007, I electronically filed the foregoing document using CM/ECF which will send notification of such filing(s) to the following:

Richard K. Herrmann
Morris James LLP

I also certify that copies were caused to be served on February 23, 2007 upon the following in the manner indicated:

BY HAND AND EMAIL

Richard K. Herrmann
Morris James LLP
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, DE 19801-1494

BY EMAIL AND FEDERAL EXPRESS

Marcus E. Sernel
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, IL 60601

/s/ Derek J. Fahnestock

Derek J. Fahnestock (#4705)
dfahnestock@mnat.com